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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,675	01/22/2001	Veronique Douin	05725.0830	6349
22852	7590	07/13/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/765,675

Applicant(s)

DOUIN ET AL.

Examiner

Gina C. Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on April 21, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-62 and 64-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-62, 64-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/21/2005.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on April 21, 2004. Claims 1-62 and 64-83 are pending. Claim rejections made under 35 U.S.C. § 103 (a) are maintained for the reasons of record.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 1-19, 21-23, 28-62, and 68-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al. (EP 0842652 A1) in view of Ziegler et al. (U.S. Pat. No. 5,135,748) and Margosiak et al. (US 6533873 B1) and Knowlton (Poucher's Perfumes, Cosmetics, and Soaps, Emulsion Theory).

Rejection is maintained for the reasons of record.

(B) Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al., Ziegler et al., Knowlton, and Margosiak et al. as applied to claims 1-19, 21-23, 30-62, and 68-83 above, and further in view of Simonnet (EP 078114 A1).

Rejection is maintained for the reasons of record.

(C) Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al., Ziegler et al., Knowlton, Margosiak et al., Simonnet as applied to claims 1-19, 21-62, and 68-83 above, and further in view of Matzik et al. (U.S. Pat. No. 5,716,418).

Rejection is maintained for the reasons of record.

(D) Claims 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al., Ziegler et al., Knowlton, Margosiak et al., Simonnet, and Matzik et al., as

applied to claims 1-62 and 68-83 above, and further in view of Decoster et al. (English translation of JP H10-338899).

Rejection is maintained for the reasons of record.

### ***Response to Arguments***

Applicant's arguments filed April 21, 2005 have been fully considered but they are not persuasive.

Applicants assert that Knowlton and Margosiak fail to provide the necessary teaching to support "the inherency theory" that the Restle/Ziegler composition is a transparent composition.

Firstly, applicants are respectfully reminded that the pending rejection is not based on inherency theory. Examiner is aware of the passage of the Knowlton that there is no absolute correlation between the dispersed-phase particle value and appearance. However, applicants' argument that particle size of the dispersed phase is irrelevant to the appearance of emulsion according to the reference is out of context. The reference teaches that an emulsion becomes totally transparent only when the refraction indices of oil and water phases are identical, which in practice happens rarely. The reference goes on to state that when refractive index difference is present, which is true for the most of the cases, the particle size of the dispersed phase becomes the "most significant factor in determining emulsion appearance". Thus it is viewed that, the intent of the author of the Knowlton reference was to suggest, and one of ordinary skill in the art would have interpreted the teaching as a whole as, that the particle size of dispersed phase is a significant factor in determining the appearance of an emulsion.

Otherwise the whole teaching of the section 19.8.1 and the data of Table 19.2 on page 552 would have absolutely no value. The data of Table 19.2 was published in the article for a reason, that is, to provide a guideline for a skilled artisan to determine emulsion appearance. Examiner takes the position that a prima facie case of obviousness has been established, and the burden is on the applicant to show that combination of Restle, and Ziegler produces unexpected or surprising results.

Moreover, it is noted that applicants admit in the specification that the transparency of the composition is due to the small particle size of the oil droplets.

The term "nanoemulsion" means a metastable oil-in-water emulsion (wherein, for example, the emulsion can comprise an oily phase dispersed in an aqueous phase) whose oil globule size is less than 150 nm, these oil globules being stabilized with a crown of amphiphilic lipids which can optionally form a liquid crystal phase of lamellar type located at the oil/aqueous phase interface. **The transparency of these emulsions derives from the small size of the oil globules, wherein said small size can be obtained for example by using a high-pressure homogenizer.** See spec., p. 2, (emphasis inserted).

Applicants' arguments with respect to rejections made in view of 1) Restle/Ziegler /Knowlton/Margosiak and further in view of Simonnet (EP 078114 A1); and 2) Restle/Ziegler/Knowlton/Margosiak./Simonnet and further in view of Matzik are moot for the above reasons.

Regarding the rejection made in view of Restle/Ziegler/ Knowlton/Margosiak /Simonnet/ Matzik and further in view of Decoster et al., applicants assert that the hair conditioning benefits of Decoster composition would have been realized only in the Decoster composition. Examiner respectfully disagrees, since it is the conditioning system, the mixture of cationic surfactant and aminosilicone, which contributes to the

conditioning benefits. Even if the conditioning benefits of the Decoster composition were obtained only in the detergent base as described in that reference, the claimed invention in instant claims 64-68 does not exclude the presence of the detergent base in the claimed composition.

***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER